THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.11591 of 1997

Dated 26-02-2007

Between:
Cheminor Drugs Limited, Plot No.9/A, Phase III, IDA, Jeedimetla, Hyderabad.

..... PETITIONER

AND

The Presiding Officer, Labour Court-III IV Floor, Chandra Vihar, M.J.Road, Hyderabad & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.11591 of 1997

O R D E R:

The award of the Labour Court in I.D.No.726 of 1993, dated 26-12-1996, is impugned, in this writ petition, by the petitioner/Management.

The second respondent-workman herein was charged of having participated in an illegal strike, of having instructed other workers to go on strike, to have obstructed workers who were willing to attend duty and to have handed out threats to them. The Labour Court held that the material established would show that, while the second respondent-workman participated in the strike, there was no evidence to show that he had organized the strike and that the punishment of removal was, undoubtedly, harsh. Since the petitioner had claimed that it had lost confidence on the second respondent-workman, the Labour Court directed payment of compensation, in lieu of reinstatement, at 12 months net salary.

Sri C.R.Sridharan, learned counsel for the petitioner, would submit that the validity of the domestic enquiry was upheld by the Labour Court and while, exercising jurisdiction under Section 11-A of the Industrial Disputes Act

(for short 'the Act'), the Labour Court had grossly erred in ignoring the evidence on record which revealed that the second respondent-workman had not only participated in the strike, but had obstructed willing workers to attend duty. Learned counsel would submit that, while imposing the punishment under Section 11-A of the Act, the Labour Court cannot show misplaced sympathy and direct payment of compensation in lieu of reinstatement, as a matter of course, more

so, in cases, where the charges held established are grave and serious.

Learned counsel would place reliance on **Bengal Bhatdee Coal Co., Ltd. v. Ram Probesh Singh**[1], in support of his contention that, in a case where an employee had participated in a strike and had physically obstructed others from attending duty the charge of misconduct was grave and serious and it could not be said that the punishment imposed was unconscionable or grossly out of proportion or amounted to victimization.

While the observations of the Supreme Court in the aforesaid judgment, no doubt, supports the contentions now urged before this Court by Sri C.R.Sridharan, learned counsel for the petitioner, it must not be lost sight of that the aforesaid judgment of the Supreme Court was prior to the introduction of Section 11-A of the Act, whereunder, power has been conferred on the Tribunal not only to re-appreciate the evidence on record but also to examine the quantum of punishment.

The scope of interference of High Courts, under Article 226 of the Constitution of India, against orders of the Tribunals is limited. In a catena of judgments, including in **Syed Yakoob v. K. S. Radhakrishnan**[2], the Supreme Court held that High Courts in exercise of its jurisdiction under Article 226 of the Constitution of India, would not sit in appeal over findings of fact recorded by the Tribunal or re-appreciate the evidence on record or substitute its views for that of Courts/Tribunals unless the findings are perverse or are based on no evidence.

The findings of the Tribunal, in the present case, that the petitioner had only participated in the strike, is perverse. While it is true that there is no evidence on record to show that the second

respondent-workman had instructed others to go on strike, the fact remains that the evidence on record would establish that he had obstructed and physically prevented willing workers from attending duty during the strike. This aspect of the matter has not been taken note of by the Tribunal while showing undue lenience and misplaced sympathy in favour of the second respondent-workman.

Sri C.R.Sridharan, learned counsel for the petitioner, would place reliance on an unreported judgment of this Court in W.P.No.6159 of 1998, dated 29-10-2004, wherein the writ petition filed by the second respondent-workman herein, against the very same award of the Labour Court dated
26-12-1996 seeking reinstatement into service was negatived by this Court. Learned counsel would submit that since the award of the Labour Court, insofar as the relief sought for by the second respondent-workman for reinstatement into service had attained finality, it was not open to the Labour Court to direct reinstatement, even if this Court were inclined to remand the matter back to the Tribunal for its consideration afresh.

The fact that the validity of the domestic enquiry has been upheld is not in dispute. The evidence on record would establish that the second respondent-workman had not only participated in an illegal strike but had also obstructed willing workers from attending duty. The punishment imposed by the Labour Court of payment of compensation of 12 months net salary, in lieu of reinstatement, is certainly a case of misplaced sympathy and cannot be accepted and, to that limited extent, the award of the Labour Court is set aside.

The question which would, however, remain is whether this Court should step into the shoes of the Labour Court and decide the appropriate punishment to be imposed on the second respondent-workman under Article 226 of the Constitution of India.

While it has been held in several judgments of the Supreme Court that in exceptional circumstances, this Court could do so, I see no reason, in the present case, to exercise discretion under Article 226 of the Constitution of India to adjudicate on the nature and extent of punishment to be imposed on the second respondent-workman. Suffice to note that the punishment, as substituted by the Labour Court, is a clear case of misplaced sympathy and cannot be accepted. The question, as to the appropriate punishment, is, however, a matter for the Labour Court to examine in exercise of its discretion under Section 11-A of the Act. Ends of justice would be met if the matter is remanded to the Labour Court to examine whether any interference is called for with regards the punishment of dismissal imposed on the second respondent-workman by the petitioner herein, and if so, the appropriate punishment to be imposed. Since the dispute relates to the year 1993, and more than 14 years has elapsed since then, I consider it appropriate to direct the Labour Court to adjudicate the matter on priority, and after hearing both sides, pass an award, in accordance with law, within a period of four months from the date of receipt of a copy of this order.

The Writ Petition is accordingly disposed of. No order as to costs.

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26-02-2007

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[1] AIR 1964 SC 486

[2] AIR 1964 SC 477